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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

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14 v.

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18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
20 CORPORATION, dba Western
Financial Planning Corporation,

21 Defendants.
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CASE NO. 3:12-cv-2164-GPC-JMA

ORDER:

**APPROVING RECEIVER'S
COURT-ORDERED PROPOSAL
REGARDING MODIFIED
ORDERLY SALE PROCESS**

**GRANTING RECEIVER'S
MOTION FOR AUTHORITY TO
ENGAGE CBRE AS CONSULTANT**

**DENYING AGUIRRE INVESTORS'
MOTION FOR STAY**

**DENYING INVESTORS JOE M.
ARDIZZONE, DAVID R.
SCHWARZ, AND LOIS
SCHWARZ'S MOTION TO
INTERVENE**

[ECF Nos. 1309, 1316, 1341, 1348]

23 Before the Court are various motions filed by Receiver Thomas C. Hebrank
24 ("Receiver"), and investors seeking to intervene in the case. ECF Nos. 1309, 1316,
25 1341, 1348.

26 First, before the Court is the Receiver's submission, pursuant to the Court's
27 directive in its May 25, 2015 Order Granting in Part and Denying in Part Receiver's
28 Motion for Order Authorizing the Receiver to Conduct an Orderly Sale of General

1 Partnership Properties (“Orderly Sale Order”), ECF No. 1304, of a Modified Orderly
2 Sale Process proposal incorporating a public sale process consistent with the
3 requirements of 28 U.S.C. § 2001. ECF No. 1309. Upon review of the Receiver’s
4 proposal, the Court finds that it accords with the requirements of § 2001, and
5 **APPROVES** the proposal.

6 Second, before the Court is the Receiver’s motion for authority to engage CBRE,
7 a real estate brokerage and consulting firm, as a consultant. ECF No. 1341. The
8 Receiver seeks permission to engage CBRE to assist in evaluating the Xpera Report
9 recommendations, pursuant to the Court’s directive in the Orderly Sale Order for the
10 Receiver to submit a report to that effect within 180 days of the issuance of that Order.
11 Orderly Sale Order 31, ECF No. 1304. Upon review of the Receiver’s motion, and
12 finding that the engagement of CBRE would assist the Receiver in effectuating the
13 Court’s directive, the Court **GRANTS** Receiver’s motion for authority to engage
14 CBRE as consultant.

15 Third, before the Court is Aguirre Investors’ motion for a stay pending appeal.
16 ECF No. 1316. “A party seeking a stay must establish that he is likely to succeed on
17 the merits, that he is likely to suffer irreparable harm in the absence of relief, that the
18 balance of equities tip in his favor, and that a stay is in the public interest.” *Humane*
19 *Soc. of U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009). Aguirre Investors’ motion
20 substantially reiterates the arguments made by Aguirre Investors in opposition to the
21 Receiver’s Orderly Sale Motion. As such, the Court finds that Aguirre Investors are not
22 likely to succeed on the merits, for the reasons explained in the Orderly Sale Order. *See*
23 ECF No. 1304 at 8 (observing that “a district court’s power to supervise an equity
24 receivership and to determine the appropriate action to be taken in the administration
25 of the receivership is extremely broad” (quoting *S.E.C. v. Capital Consultants, LLC*,
26 397 F.3d 733, 738 (9th Cir. 2005)) (internal quotation marks omitted)); *see generally*
27 *id.* Accordingly, the Court **DENIES** Aguirre Investors’ motion.

28 Finally, before the Court is the motion to intervene of new investors represented

1 by Aguirre, Joe M. Ardizzone, David R. Schwarz, and Lois Schwarz (“Investors”).
 2 ECF No. 1348. The Court **DENIES** Investors’ motion to intervene. First, the only
 3 novel issue raised by Investors’ motion is the argument that the Securities and
 4 Exchange Commission (“SEC”) and the Receiver failed to give investors notice of the
 5 Orderly Sale Process in accordance with Civil Local Rule 66.1, which states that “[t]he
 6 receiver must give all interest parties at least fourteen (14) days’ notice of the time and
 7 place of all pertinent hearings.” ECF No. 1348 at 4. Investors admit that the Receiver
 8 sent an email to investors notifying them of the hearing on May 6, 2016, fourteen days
 9 before the May 20, 2016 hearing, but argue that this notice was “defective” because
 10 “[m]any investor email address [sic] were unavailable or were returned undeliverable.”
 11 *Id.* at 4–5. However, the Court previously authorized the Receiver to fulfill the
 12 requirements of Rule 66.1 by posting notices related to petitions for confirmation of
 13 sales of property, reports of the receiver, and fee applications on the Receiver’s website
 14 (www.ethreadvisors.com). *See* Order Granting in Part Unopposed Motion for Relief
 15 From Certain Requirements Under Local Rule 66.1 2–3, ECF No. 170. In that Order,
 16 the Court acknowledged the logistical burdens and unnecessary costs entailed by
 17 attempting to reach approximately 3,370 investors directly by mail. *Id.* Investors do not
 18 dispute that the Receiver posted notice of the Orderly Sale Motion on his website, as
 19 well as e-mailing investors. ECF No. 1348 at 5. The Court thus rejects Investors’
 20 argument that they lacked notice of the May 26, 2015 hearing.

21 Second, the other arguments raised by Investors in their motion, including
 22 Investors’ argument that they have been deprived of notice and the opportunity to be
 23 heard with regards to the case as a whole, have already been thoroughly considered and
 24 rejected by the Court. *See* ECF Nos. 1296, 1303, 1304.

25 CONCLUSION

26 Accordingly, **IT IS HEREBY ORDERED** that:

- 27 1. The Receiver’s Court-Ordered Proposal Regarding Modified Orderly Sale
 28 Process, ECF No. 1403, Exhibit A, is **APPROVED**.

1 2. The Receiver's Motion for Authority to Engage CBRE as Consultant, ECF No.
2 1341, is **GRANTED**. The Receiver is authorized to engage CBRE to perform
3 the work described in the Receiver's motion, on the terms and conditions
4 discussed therein and in the proposal attached to the Marschall Declaration, ECF
5 No. 1341-4, as Exhibit B.

6 3. Aguirre Investors' Motion for a Stay Pending Appeal, ECF No. 1316, is
7 **DENIED**.

8 4. Investors Joe M. Ardizzone, David R. Schwarz, and Lois Schwarz's Motion to
9 Intervene, ECF No. 1348, is **DENIED**.

10 **IT IS SO ORDERED.**

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12 DATED: August 30, 2016

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14 HON. GONZALO P. CURIEL
15 United States District Judge
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